

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PACIFIC LUTHERAN UNIVERSITY
Employer

and

Case 19-RC-102521

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 925
Petitioner

NOTICE AND INVITATION TO FILE BRIEFS

On September 23, 2013, the Board (Chairman Pearce, Members Miscimarra and Hirozawa) granted the Employer's Request for Review of the Regional Director's Decision and Direction of Election because it raised "substantial issues warranting review...with respect to the assertion of jurisdiction over the Employer and the determination that certain faculty members are not managerial employees" under the Act.¹

The Board invites the filing of briefs to afford the parties and interested *amici* the opportunity to address the issues raised in this case.

The parties and *amici* specifically are invited to address one or more of the following questions:

1. What is the test the Board should apply under *NLRB v. Catholic Bishop*, 440 U.S. 490 (1979), to determine whether self-identified "religiously affiliated educational institutions" are exempt from the Board's jurisdiction?
2. What factors should the Board consider in determining the appropriate standard for evaluating jurisdiction under *Catholic Bishop*?
3. Applying the appropriate test, should the Board assert jurisdiction over this Employer?
4. Which of the factors identified in *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), and the relevant cases decided by the Board since *Yeshiva* are most significant in making a finding of managerial status for university faculty members and why?

¹ The Board denied the Employer's Request for Review of the Regional Director's findings that a unit of full-time and part-time non-tenure eligible contingent faculty is an appropriate unit, the application of an eligibility formula, and the admission of Petitioner's Exhibit 22 into the record. The Employer's request to stay the election also was denied. Member Miscimarra would have granted review of these findings and granted the request for a stay.

5. In the areas identified as “significant,” what evidence should be required to establish that faculty make or “effectively control” decisions?
6. Are the factors identified in the Board case law to date sufficient to correctly determine which faculty are managerial?
7. If the factors are not sufficient, what additional factors would aid the Board in making a determination of managerial status for faculty?
8. Is the Board’s application of the *Yeshiva* factors to faculty consistent with its determination of the managerial status of other categories of employees and, if not, (a) may the Board adopt a distinct approach for such determinations in an academic context, or (b) can the Board more closely align its determinations in an academic context with its determinations in non-academic contexts in a manner that remains consistent with the decision in *Yeshiva*?
9. Do the factors employed by the Board in determining the status of university faculty members properly distinguish between indicia of managerial status and indicia of professional status under the Act?
10. Have there been developments in models of decision making in private universities since the issuance of *Yeshiva* that are relevant to the factors the Board should consider in making a determination of faculty managerial status? If so, what are those developments and how should they influence the Board’s analysis?
11. As suggested in footnote 31 of the *Yeshiva* decision, are there useful distinctions to be drawn between and among different job classifications within a faculty--such as between professors, associate professors, assistant professors, and lecturers or between tenured and untenured faculty--depending on the faculty's structure and practices?
12. Did the Regional Director correctly find the faculty members involved in this case to be employees?

Briefs not exceeding 50 pages in length shall be filed with the Board in Washington, D.C. on or before March 28, 2014. The parties may file responsive briefs on or before April 11, 2014, which shall not exceed 25 pages in length. No other responsive briefs will be accepted. The parties and *amici* shall file briefs electronically by going to www.nlr.gov and clicking on “E-File Documents.” If assistance is needed in E-Filing on the Agency’s website, please contact the Office of Executive Secretary at 202-273-1940 or the undersigned at 202-273-3737.

Dated, Washington, D.C., February 10, 2014.

By direction of the Board:

Gary Shinnars
Executive Secretary